



# KME FIRE APPARATUS

*By Kovatch Mobile Equipment Corp.*

One Industrial Complex – Nesquehoning, PA 18240  
(570) 669-5132 [Phone] - (570) 669-5124 [Fax]  
[www.kovatch.com](http://www.kovatch.com) URL

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## **AGREEMENT OF SALE FOR FIRE APPARATUS**

THIS AGREEMENT is made between Kovatch Mobile Equipment Corp., t/a KME Fire Apparatus, of One Industrial Complex, Nesquehoning, Pennsylvania, ("Company") and:

City of West Lafayette ,of  
(Legal Name of Buyer)

711 W Navajo St Tippecanoe County, Indiana 47906  
(Address, City, County, State, Zip)

765-775-5160  
("Buyer" Phone Number)

### **BUYER INFORMATION (check one):**

Municipal Corporation \_\_\_\_\_ Non-Profit Corporation \_\_\_\_\_

Business Corporation \_\_\_\_\_ Sole Proprietorship \_\_\_\_\_

Other (specify) \_\_\_\_\_

State of \_\_\_\_\_ Date of Incorporation: \_\_\_\_\_

**1. ACCEPTANCE:** Company agrees to sell and Buyer agrees to purchase the fire apparatus ("Apparatus") described in the Specifications incorporated as Exhibit A of this contract, as may be amended in writing, and the equipment listed herein, all in accordance with the terms and conditions set forth herein.

**2. DELIVERY SCHEDULE:** The Apparatus shall be ready for delivery F.O.B. at **West Lafayette FD** approximately 365 days after receipt of Contract subject to extension due to changes made by Buyer or in accordance with Sections 5 or 12 below.

3. **PRICE:** Buyer shall pay to Company as the Purchase Price for the Apparatus the sum of **FIVE HUNDRED THOUSAND SEVEN HUNDRED FIFTY AND 50/100 U.S. Dollars (\$500,750.50).**

This purchase price includes the following taxes: N/A

Any applicable taxes not specifically noted above will be paid by the Buyer directly, or will be added to the Purchase Price and paid by Company. If Buyer claims exemption from any tax, Buyer agrees to promptly furnish the applicable exemption certificate(s) and to indemnify and save Company harmless from any such tax, interest or penalty, which may at any time be assessed against Company as a result of this transaction.

4. **TERMS OF PAYMENT:** Terms of payment shall be:

- (A) Due upon signing.....\$500,750.50  
Due upon completion/receipt of chassis...\$ \_\_\_\_\_ N/A \_\_\_\_\_  
Due upon delivery .....\$ \_\_\_\_\_ N/A \_\_\_\_\_

(B) Check applicable method of payment for remaining balance due: N/A

\_\_\_\_\_ Cash/cash equivalent at time of delivery

\_\_\_\_\_ Installment Sales Contract - Financing\*

\_\_\_\_\_ Lease-Purchase Agreement - Financing\*

\* Lender/Leasing Company: \_\_\_\_\_

(C) No payment of any amount due under this Agreement shall be made directly to a KME Sales Representative without prior written approval from Company.

5. **CONTINGENCIES** : Company will not be liable for any delay, failure to make delivery, or other default due to strikes or labor unrest, war, riot, federal, state or local government action, fire, flood or other disaster or acts of God, accidents, breakdown of machinery, lack of or inability to obtain materials, parts or supplies, or any other causes or circumstances beyond the reasonable control of Company which prevent or hinder Company's manufacture and/or delivery of the Apparatus.

6. **WARRANTY** : Company provides a limited warranty on new Apparatus of its own manufacture in accordance with the warranty terms set forth in the Specifications.

**EXCEPT TO THE EXTENT PROHIBITED BY LAW, COMPANY MAKES NO OTHER WARRANTY, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. THERE ARE NO WARRANTIES WHICH EXTEND BEYOND THE FACE HEREOF.**

SEE SEPARATE WARRANTY STATEMENT(S) FOR COMPLETE INFORMATION.

7. **DISCLAIMER OF CONSEQUENTIAL DAMAGES:** COMPANY EXPRESSLY DISCLAIMS ANY LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES WHICH MAY BE SUSTAINED BY BUYER, INCLUDING BUT NOT LIMITED TO THOSE ARISING FROM THE USE, INABILITY TO USE, MAINTENANCE OR REPAIR OF THE APPARATUS, WHETHER UNDER THEORIES OF BREACH OF EXPRESS OR IMPLIED WARRANTY, NEGLIGENCE, STRICT LIABILITY, OR OTHERWISE.

8. **CANCELLATION:** This contract is not subject to cancellation by Buyer, unless for material breach by Company, except upon payment to Company of reasonable cancellation charges, which shall take into account expenses already incurred and commitments made by Company and Company's anticipated profit.

**9. ENTIRE AGREEMENT; AMENDMENTS:** This contract, including its appendices, embodies the entire understanding between the parties relating to the subject matter contained herein and merges all prior discussions and agreements between them. No agent or representative of Company has authority to make any representations, statements, warranties or agreements not herein expressed. All modifications or amendments of this contract, including the appendices, and Change Orders, must be in writing signed by an authorized representative of each of the parties hereto.

**10. SEVER ABILITY :** If any provision hereof shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision, and this contract shall be construed as if the invalid, illegal or unenforceable provision had never been contained in it, unless to do so clearly negates the overall intent or purpose of the parties in entering into this contract.

**11. CHANGES IN COMMERCIAL SPECIFICATIONS:** Specifications for all commercial components of the Apparatus, manufactured by companies other than KME, are subject to change without notice. Specifications for such components will be as available at the time of manufacture of the Apparatus. Company shall not be liable for any specification deviations from the original contract specifications on such components made by their original manufacturer.

**12. CHANGES IN REGULATIONS/INDUSTRY STANDARDS:** The Purchase Price is subject to adjustment for changes to the Apparatus necessitated by changes in applicable government regulations (such as Company's FMVSS or emissions regulations), industry standards (such as NFPA standards), replacement of discontinued models or components from vendors, or freight charges. Buyer is responsible for any cost increases due to such changes beyond Company's control.

**13. Extension Clause.** Pending mutual agreement between Buyer and Company, the Buyer, in its sole discretion, may purchase additional Apparatus and equipment off of this contract for ten (10) years, but is not required and/or legally obligated to do so. The Company shall not substitute a brand of Apparatus different from the bid of the Buyer. The Company shall be responsible for advising the Buyer of any upgrades, improvements, or engineering changes made to the Apparatus as agreed upon in this contract. The purchase price may be subject to any supplier price increases caused by GSA, EPA, NFPA, DOT, or other regulatory changes, or fluctuations in market prices of aluminum or other raw materials. Normal cost adjustments for inflation may also apply.

**14. Tag-on Clause.** Any interested Fire Department, Government Agency, or Emergency Medical Service provider may purchase Apparatus off of this contract, for the duration of this contract not to exceed 10 years. Any changes to Apparatus purchased off this contract must be made with the approval of the Company.

**15. Prevailing party – attorney fees.** Notwithstanding any term or condition in this Contract to the contrary, in the event litigation is commenced to enforce any term or condition of this Contract, the prevailing party shall be entitled to costs and expenses of litigation including a reasonable attorney fee.

**16. Engaging in activities w/Iran**

By signing this Contract, Kovatch Mobile Equipment Corp. certifies that it is not engaged in investment activities in the country of Iran as set forth in I.C. 5-22-16.5.

**17. E-Verify**

**Kovatch Mobile Equipment Corp.** shall comply with E-Verify Program as follows:

a. **Kovatch Mobile Equipment Corp.** shall enroll in and verify the work eligibility status of all newly hired employees of **Kovatch Mobile Equipment Corp.** through the federal government's E-Verify Program ("Program"). **Kovatch Mobile Equipment Corp.** is not required to verify the work eligibility status of all newly hired employees through the Program if the Program no longer exists.

b. **Kovatch Mobile Equipment Corp.** and its subcontractors shall not knowingly employ or contract with an unauthorized alien or retain an employee or contract with a person that **Kovatch Mobile Equipment Corp.** or its subcontractors subsequently learns is an unauthorized alien. If **Kovatch Mobile Equipment Corp.** violates this Section

7(b), the City of West Lafayette, / West Lafayette Redevelopment Commission shall require **Kovatch Mobile Equipment Corp.** to remedy the violation not later than thirty (30) days after the City of West Lafayette, / West Lafayette Redevelopment Commission notifies **Kovatch Mobile Equipment Corp.** If **Kovatch Mobile Equipment Corp.** fails to remedy the violation within the thirty (30) day period, the City of West Lafayette, / West Lafayette Redevelopment Commission shall terminate the contract for breach of contract. If the City of West Lafayette, / West Lafayette Redevelopment Commission terminates the contract, **Kovatch Mobile Equipment Corp.** shall, in addition to any other contractual remedies, be liable to the City of West Lafayette, / West Lafayette Redevelopment Commission for actual damages. There is a rebuttable presumption that **Kovatch Mobile Equipment Corp.** did not knowingly employ an unauthorized alien if **Kovatch Mobile Equipment Corp.** verified the work eligibility status of the employee through the Program.

c. If **Kovatch Mobile Equipment Corp.** employs or contracts with an unauthorized alien but the City of West Lafayette, / West Lafayette Redevelopment Commission determines that terminating the contract would be detrimental to the public interest or public property, the City of West Lafayette, / West Lafayette Redevelopment Commission may allow the contract to remain in effect until the City of West Lafayette, / West Lafayette Redevelopment Commission procures a new contractor.

d. **Kovatch Mobile Equipment Corp.** shall, prior to performing any work, require each subcontractor to certify to **Kovatch Mobile Equipment Corp.** that the subcontractor does not knowingly employ or contract with an unauthorized alien and has enrolled in the Program. **Kovatch Mobile Equipment Corp.** shall maintain on file a certification from each subcontractor throughout the duration of the Project. If **Kovatch Mobile Equipment Corp.** determines that a subcontractor is in violation of this Section 7(d), **Kovatch Mobile Equipment Corp.** may terminate its contract with the subcontractor for such violation. Such termination may not be considered a breach of contract by **Kovatch Mobile Equipment Corp.** or the subcontractor.

e. By its signature below, **Kovatch Mobile Equipment Corp.** swears or affirms that it i) has enrolled and is participating in the E-Verify program, ii) has provided documentation to the City of West Lafayette, / West Lafayette Redevelopment Commission that it has enrolled and is participating in the E-Verify program, and iii) does not knowingly employ an unauthorized alien.

## **18. Non-Discrimination**

**Kovatch Mobile Equipment Corp.** agrees:

(a) That in the hiring of employees for the performance of work under this contract or any subcontract hereunder, no contractor, or subcontractor, nor any person acting on behalf of such contractor or subcontractor, shall, by reason of race, religion, color, sex, national origin or ancestry, discriminate against any citizen of the State of Indiana who is qualified and available to perform the work to which the employment relates;

(b) That no contractor, subcontractor, nor any person on his behalf shall, in any manner, discriminate against or intimidate any employee hired for the performance of work under this contract on account of race, religion, color, sex, national origin or ancestry;

(c) That the City of West Lafayette, / West Lafayette Redevelopment Commission may deduct from the amount payable to the contractor a penalty of five dollars (\$5.00) for each person for each calendar day during which such person was discriminated against or intimidated in violation of the provisions of the contract;

(d) If there is a second or any subsequent violation of the terms or conditions of this section, then this contract may be cancelled or terminated by City of West Lafayette, / West Lafayette Redevelopment Commission and all money due or to become due hereunder will be forfeited.

**EXPLANATION OF CONTRACT AMOUNT**

**BASE BID PRICE: \$551252.00**

**LESS TRADE-IN OF ONE (1) 1999 PIERCE QUANTUM PUMPER VIN #4P1CT02EXXA001682 WITH RELATED EQUIPMENT AS SPECIFIED ON DEPARTMENT SPECIFICATIONS PAGE 13**

**(30,000.00)**

**SUB TOTAL PRICE: \$521,252.00**

**OPTIONS:**

**PREPAYMENT OF 500,750.50 DUE AT SIGNING (19,509.00)**

**DELETE DECK GUN (2640.00)**

**DELETE REAR CAMERA SYSTEM (1425.00)**

**ADD STAINLESS STEEL FUEL TANK +1435.00**

**ADD 24 FT 2-SECTION LADDER +547.00**

**DELETE 30 FT 3-SECTION LADDER (747.00)**

**ADD BRIGADE ELECTRONICS CAMERA SYSTEM +1837.50**

**CONTRACT TOTAL WITH SELECTED OPTIONS:**  
**\$500,750.50 DUE AT SIGNING OF CONTRACT**

IN WITNESS WHEREOF, Buyer and Company have caused this Agreement to be executed by their duly authorized representatives this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
(Buyer's Legal Name)

By: \_\_\_\_\_ By: \_\_\_\_\_

Title: \_\_\_\_\_ Title: \_\_\_\_\_

By: \_\_\_\_\_ By: \_\_\_\_\_

Title: \_\_\_\_\_ Title: \_\_\_\_\_

Sales Representative: \_\_\_\_\_

Organization Name: **Donley Safety**

By: Cindy VanGordon

Title: Sales Representative

This contract is not a valid and binding obligation until approved, dated and executed by Kovatch Mobile Equipment Corp.,

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

## FEDERAL EXCISE TAX EXEMPTION CERTIFICATE

(For use by

Date\_\_\_\_\_

The undersigned hereby certifies that he is:

\_\_\_\_\_ of \_\_\_\_\_

(Title of Officer)

and that he is authorized to execute this certificate and that the article or articles specified in the accompanying order or on the reverse side hereof are purchased from Kovatch Mobile Equipment Corporation, for the exclusive use of

\_\_\_\_\_

It is understood that the exemption from tax in the case of sales or articles under this exemption certificate to the United States, States, etc. is limited to the sale of articles purchased for their exclusive use; and it is agreed that, if articles purchased tax free under exemption certificates are used otherwise, or are sold to employees or others, such fact must be reported to the Federal Tax Office of the article or articles covered by this certificate. It is also understood that the fraudulent use of this certificate to secure exemption will subject the undersigned and all guilty parties to a fine of not more than \$ 10,000.00 or to imprisonment for not more than five years, or both, together with costs or prosecution.

\_\_\_\_\_  
(Name of Organization)

By \_\_\_\_\_(Signature)

## SALES OR USE TAX EXEMPTION CERTIFICATE

Name of Buyer: \_\_\_\_\_

Address: \_\_\_\_\_  
City State Zip

The above named business, holder of the following State permit number

Number\_\_\_\_\_ State\_\_\_\_\_ respectively certifies that all tangible property purchased from Kovatch Mobile Equipment Corporation,

( ) Resale as tangible personal property ( ) Governmental Unit or Instrumentality

( ) Non or Charitable Unit

( ) Other (Explain Fully)\_\_\_\_\_

Signature\_\_\_\_\_ Title\_\_\_\_\_

Date\_\_\_\_\_

Federal Excise Tax and State Sales Tax will be added if the above form is not completed and signed.